

Before the  
Administrative Hearing Commission  
State of Missouri



GERALD GEIER and STOP NOW!,

Petitioners,

vs.

MISSOURI ETHICS COMMISSION,

Respondent.

No. 12-2243 EC

**DECISION**

We grant summary decision in favor of Respondent Missouri Ethics Commission (the MEC).

**Procedure**

On December 21, 2012, Petitioners Gerald Geier and “Stop Now!” (a political organization, described more fully below) initiated the instant case by filing a document captioned, “Complaint & Motion for Stay.” They amended the filing by interlineation, with leave, on January 11, 2013. Counts I, III and IV are substantive claims concerning statutes and a decision issued by the MEC. “Count II” was described as a “Motion for Stay,” which we denied on January 16, 2013.

The MEC filed its answer on January 22, 2013 and an amended answer, with leave, on February 19, 2013.

On April 30, 2013, the MEC filed a motion for summary decision, statement of uncontroverted material facts, and memorandum of law. The petitioners responded on May 22, 2013 and filed an additional response on May 28, 2013. The MEC filed a reply on June 5, 2013.

We may grant a motion for summary decision if the moving party “establishes facts that entitle [it] to a favorable decision and no party genuinely disputes such facts.” 1 CSR 15-3.446(6)(A).<sup>1</sup> The material facts are not in dispute here. We base our findings of fact on allegations pleaded in the petitioners’ amended complaint and admitted by the MEC in its amended answer, and documents filed by the MEC in connection with its motion for summary decision and by the petitioners in response: certified business records of the MEC; a transcript of the December 4, 2012 hearing in the underlying matter before the MEC; Mr. Geier’s affidavits; and Stop Now!’s certified bank records.

### **Findings of Fact**

1. Stop Now!<sup>2</sup> was registered with the Missouri Ethics Commission (the MEC) as a continuing committee at all times relevant to this case.
2. Gerald Geier was registered with the MEC as the treasurer of Stop Now! at all times relevant to this case.

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<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> Stop Now!’s original Committee Organization Statement, filed in 1991, reflects the committee’s name as “Stop Taxing Our People Now!” All other related documents, including an amended organizational statement and bank records in evidence reflect the shortened committee name, Stop Now! The petitioners and the MEC attach no significance to the use of the shortened name.

3. The statement of organization for Stop Now! filed with the Secretary of State<sup>3</sup> in 1991 listed the official fund depository for Stop Now! as Boatmen's First National Bank.<sup>4</sup>

4. No amended statement of organization was ever filed changing the official fund depository for Stop Now!.

5. The Stop Now! account at Bank of America was closed in 2006, and no other official depository account for Stop Now! was established.

6. Stop Now! did not have an official fund depository within the state of Missouri after 2006.

7. No statement of termination was filed with the MEC for Stop Now! until January 13, 2012.

8. Quarterly statements of limited activity, which showed no activity, were filed with the MEC on behalf of Stop Now! for eight years, from October 2002 through October 2010.

9. No campaign finance disclosure report for Stop Now! was filed on or before April 15, 2011 for the reporting period January 1, 2011 through March 31, 2011.

10. No campaign finance disclosure report for Stop Now! was filed on or before July 15, 2011 for the reporting period April 1, 2011 through June 30, 2011.

11. No campaign finance disclosure report for Stop Now! was filed on or before October 15, 2011 for the reporting period July 1, 2011 through September 30, 2011.

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<sup>3</sup> The MEC did not exist in 1991 when Stop Now!'s original Committee Organization Statement was filed. At that time, the Missouri Secretary of State had many of the statutory responsibilities now assigned to the MEC, including administering the filing of campaign finance disclosure reports.

<sup>4</sup> Although the original organization statement identifies the official fund depository as Boatmen's First National Bank, all references to the committee depository account in the MEC's records and the bank records identify the official fund depository as Bank of America. Because the MEC attaches no significance to the two different bank names, we assume for purposes of the motion that the committee's bank simply changed names, or ownership, or both.

12. The MEC sent several notices to Mr. Geier and Stop Now! regarding the missing reports and the lack of an official fund depository for the committee. Neither Mr. Geier nor anyone else on behalf of Stop Now! responded to the notices.

13. Because of the lack of response, the MEC filed a complaint against Mr. Geier and Stop Now!, and began an investigation.

14. On January 13, 2012, Mr. Geier filed the three overdue quarterly statements of limited activity and the termination statement with the MEC.

15. The MEC held a closed hearing on the complaint on December 4, 2012, and issued findings of fact, conclusions of law, and an order dated December 7, 2012.

16. The MEC found Mr. Geier and Stop Now! violated §§ 130.046.1, 130.021.4(1) and 130.021.7, RSMo,<sup>5</sup> by failing to timely file three campaign finance disclosure reports and by failing to file a termination statement after Stop Now!’s official depository account was closed.

17. The MEC ordered that a letter be issued and no further action taken.

18. The MEC issued a “Letter of No Further Action” to Mr. Geier on December 7, 2012. The letter included the statement, “The Commission has found that you violated sections 130.046.1, 130.021.4(1), and 130.021.7, RSMo. in your capacity as Treasurer of Stop Now! Continuing Committee.”

### **Conclusions of Law**

We have jurisdiction of this matter. § 105.961.3, RSMo. We follow the same law that the MEC must follow. *See Mo. Ethics Comm’n v. Wilson*, 957 S.W.2d 794, 798-99 (Mo. App. W.D. 1997).

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<sup>5</sup> All references to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012) unless otherwise noted.

The petitioners concede that they “violated the literal terms of the campaign finance reporting statute.”<sup>6</sup> But, they argue, the “real issues” in this case are whether the MEC’s enforcement action violated the First Amendment to the U.S. Constitution, and whether the MEC’s closed hearing was unconstitutional and therefore void.<sup>7</sup>

Count I—Constitutionality of §§ 130.046.1, and 130.021.4(1), .7 and .8,  
“as applied” to the petitioners

As pleaded, the petitioners’ Count I is an “as applied” constitutional challenge to §§130.046.1, and 130.021.4(1), .7 and .8, RSMo. Upon closer inspection, we conclude that the challenge is a facial one, which we have no authority to decide.

A continuing committee such as Stop Now! must file campaign finance disclosure reports with the MEC. §§ 130.011(1) and 130.026.5. The statutes the petitioners challenge in regard to reporting requirements are as follows:

**§ 130.046.1.** The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

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(3) Not later than the fifteenth day following the close of each calendar quarter. Notwithstanding the provisions of this subsection, if any committee accepts contributions or makes expenditures in support of or in opposition to a ballot measure or a candidate, and the report required by this subsection for the most recent calendar quarter is filed prior to the fortieth day before the election on the measure or candidate, the committee shall file an additional disclosure report not later than the fortieth day before the election for the period closing on the forty-fifth day before the election. [Emphasis added.]

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<sup>6</sup> Petitioners’ Response in Opposition to Respondent’s Motion for Summary Decision, p. 2.

<sup>7</sup> Petitioners’ Response in Opposition to Respondent’s Motion for Summary Decision, p. 1.

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§ 130.021.4(1). Every committee shall have a single official fund depository within this state which shall be a federally or state-chartered bank, a federally or state-chartered savings and loan association, or a federally or state-chartered credit union in which the committee shall open and thereafter maintain at least one official depository account in its own name. ...[Emphasis added.]

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§ 130.021.7. A committee which has filed a statement of organization and has not terminated shall not be required to file another statement of organization, except that when there is a change in any of the information previously reported as required by subdivisions (1) to (8) of subsection 5 of this section an amended statement of organization shall be filed within twenty days after the change occurs, but no later than the date of the filing of the next report required to be filed by that committee by section 130.046. [Emphasis added.]

§ 130.021.8. Upon termination of a committee, a termination statement indicating dissolution shall be filed not later than ten days after the date of dissolution with the appropriate officer or officers with whom the committee's statement of organization was filed. The termination statement shall include: the distribution made of any remaining surplus funds and the disposition of any deficits; and the name, mailing address and telephone number of the individual responsible for preserving the committee's records and accounts as required in section 130.036. [Emphasis added.]

Statutory interpretation begins with the language of the statutes as written:

“If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then we are bound by that intent and cannot resort to any statutory construction in interpreting the statute.”

*Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Scott v. Blue Springs Ford Sales, Inc.*, 215 S.W.3d 145, 166 (Mo. App. W.D. 2006)). We cannot add to, subtract from, or vary the terms of a statute, or make exceptions. *Ryder Student Transp. Servs., Inc. v. Dir. of Revenue*, 896 S.W.2d 633, 635 (Mo. banc 1995); *Bridge Data Co. v. Dir. of*

*Revenue*, 794 S.W.2d 204, 207 (Mo. banc 1990); and *Lynn v. Dir. of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

Moreover, it is axiomatic that this Commission’s “adjudicative power . . . extends only to determination of facts and to application of *existing law* to the facts in order to resolve the issues confided to the agency expertise.” *Air Evac EMS v. Director of Revenue*, 779 S.W.2d 573, 575-576 (Mo. banc 1989) (emphasis in original). Only the judiciary can declare the law. *E.g.*, *Cocktail Fortune, Inc. v. Dir. of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999); *State Tax Comm’n v. Admin. Hearing Comm’n*, 641 S.W.2d 69, 75 (Mo. banc 1982) (courts declare the law; executive agencies cannot declare validity or invalidity of statutes and rules). This Commission cannot.

As noted above, the petitioners do not dispute that they violated the “literal” or plain language of the statutes. In view of that admission, they depart from the “as applied” challenge they make in Count I of their complaint, and argue that “no executive official ought to enforce a statute that is facially unconstitutional,” including “a hearing officer[.]”<sup>8</sup>

We agree that the petitioners violated the literal or plain language of the statutes. Mr. Geier, as treasurer of Stop Now!, was required to timely file quarterly campaign finance disclosure reports with the MEC, §130.046, and to maintain an official depository account so long as the committee was in existence, §130.021. The evidence demonstrates that no statement of termination was filed for Stop Now! until January 2013, although its official fund depository account was closed in 2006 and none was opened afterward.

The evidence also demonstrates that while some documents—quarterly statements of limited activity, showing no activity—were filed with the MEC for eight years, from October

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<sup>8</sup> Petitioners’ Response in Opposition to Respondent’s Motion for Summary Decision, p. 4.

2002 through October 2010, no campaign financial reports were filed for three reporting periods during 2011 at the time they were due. They were filed late, in January 2013, after the MEC had sent the petitioners several notices to which it received no response and after the MEC filed a complaint against the petitioners and began an investigation.

The petitioners argue that committees that have not operated for a period of years should be free from the reporting requirements and burdens of the State's campaign finance statutes, otherwise the statutes operate to violate the petitioners' First Amendment rights.

However, we are aware of no apposite judicial declaration of the law to the effect that the Missouri statutes the petitioners challenge must be construed in any way other than by their plain language so as to avoid a constitutional defect. The case law on which the petitioners rely does not stand for such a proposition. Because we are not free to add to, subtract from, vary, or make exceptions to statutes, and because we cannot declare the law—which we would be required to do to afford the petitioners the relief they seek—we must reject the petitioners' Count I claim.

#### Count II—"Motion for Stay"

In their suggestions in opposition, the petitioners renew their motion for a stay. We previously denied the motion, and we reaffirm that denial now.

As pleaded, the petitioners asked in Count II that the instant proceedings be stayed while they pursued a parallel challenge in a case then pending in the Eighth Circuit Court of Appeals, *Geier v. Missouri Ethics Commission*, \_\_\_ F.3d \_\_\_, 2013 WL 2157762 (May 21, 2013). The Eighth Circuit, in its decision of May 21, affirmed the lower court's decision to abstain from exercising jurisdiction over the challenges to the Missouri statutes, because the petitioners had an adequate opportunity to raise their constitutional challenges through the State's administrative



processes. 2013 WL 2157762 at \*4. In view of that decision, the motion for stay, as filed, is moot.

But, the petitioners argue, this Commission should proceed to fashion a remedy because their speech is being stifled.<sup>9</sup> We reject the argument. As a result of the underlying proceeding, the MEC concluded that the petitioners unknowingly violated §§ 130.046, and 130.021.4(1) and .7. By the time the MEC issued its findings, ordered no monetary penalty, and ordered that a letter issue, indicating no further action would be taken, Mr. Geier had already filed the statutorily required reports. The letter of no further action then issued. There is no action for this Commission to stay, as a practical matter.

Further, when the MEC finds the campaign finance law has been violated, § 105.961.4 describes six specific actions and directs that “one or more” of the actions “shall” be taken. The letter of no further action is one of the six, and appears to be the most benign one. As earlier noted, we must apply the law that the MEC applies. And as discussed immediately above, we are not free to add to, subtract from, vary, or make exceptions to statutes, and we cannot declare the law. Therefore, we have no authority to fashion a stay under the circumstances.

### Count III—Personal Liability

In Count III, captioned, “Declaration of No Personal Liability for Geier (State Law Issue),” the petitioners claim that Missouri law does not provide a mechanism for finding that a treasurer of a committee violated the campaign finance law and to be held liable in his or her personal capacity, as the MEC did here with respect to Mr. Geier.

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<sup>9</sup> Petitioners’ Response in Opposition to Respondent’s Motion for Summary Decision, p. 5.

The petitioners overlook the plain language of § 130.058, RSMo (2000), which provides in relevant part:

The candidate or the committee treasurer of any committee except a candidate committee is ultimately responsible for all reporting requirements pursuant to this chapter[.]

and § 130.041.1, which provides in relevant part that:

the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization shall file a legibly printed or typed disclosure report of receipts and expenditures.

These provisions make Mr. Geier, as the committee treasurer, responsible for his failure to comply with the requirements to timely file quarterly reports while the committee was officially in existence, § 130.046, to maintain an official depository account while it was in existence, § 130.021.4(1), and to notify the MEC of changes to the account and of dissolution of the committee, § 130.041.1.

Missouri law authorizes holding a continuing committee treasurer responsible for complying with the provisions of §§ 130.046 and 130.021 and for violations of those provisions. Accordingly, we conclude that Mr. Geier was responsible for complying with those provisions and violated them.

#### Count IV—Challenge to constitutionality of §105.961.3

Count IV, captioned “Closed Door Meetings Unconstitutional,” is a challenge to the facial validity of §105.961.3, which allows the MEC to conduct closed hearings. Noted above, this Commission does not have the authority to declare a Missouri statute invalid for any reason. *State Tax Comm’n*, 641 S.W.2d at 75.

We therefore deny Count IV.

### **Summary**

The Director's motion for summary decision is granted.

The hearing presently scheduled for June 17, 2013 is canceled.

SO ORDERED on June 11, 2013.

*\s\Alana M. Barragán-Scott*

ALANA M. BARRAGÁN-SCOTT

Commissioner